

# **Government of Luxembourg: obstructing European tax reforms**

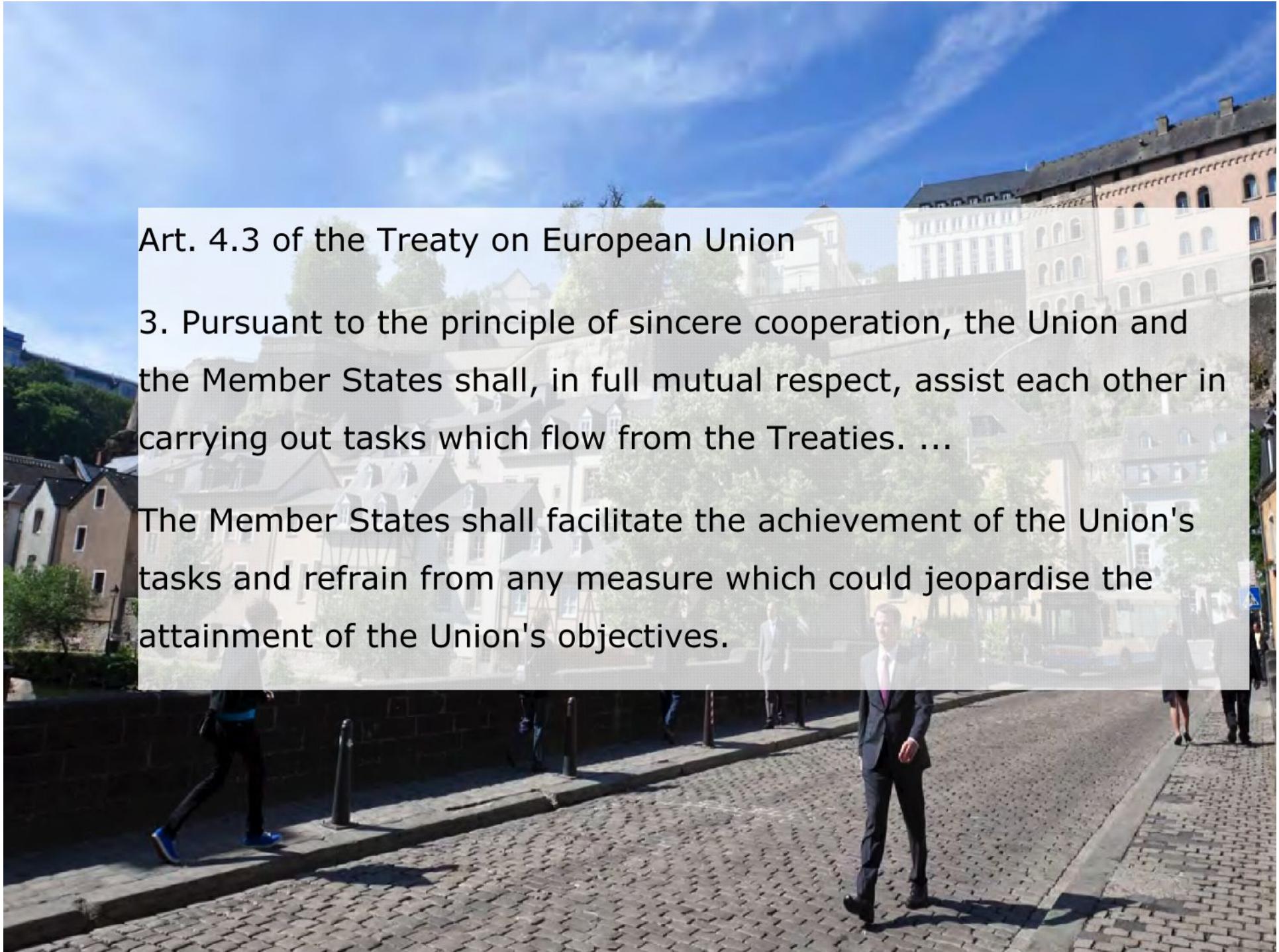
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Obstructing European tax reform and investigation

[www.gruene.de](http://www.gruene.de)

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### Art. 4.3 of the Treaty on European Union

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. ...

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

## **The obstruction of reform**

1. The Code of Conduct group
2. The planned reform
3. The obstruction of the reform

## The Code group

- established by the Council through a resolution on the 1<sup>st</sup> of December 1997
- Website: <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>

### Code of Conduct Group (Business Taxation)

The Code of Conduct Group (Business Taxation) was set up by Ecofin on 9 March 1998. It mainly deals with **assessing the tax measures** which fall within the scope of the **code of conduct** (adopted in December 1997) for business taxation and overseeing the provision of information on those measures.

The code of conduct is not a legally binding instrument but its adoption requires the **commitment of member states to**:

- **abolish** existing tax measures that constitute **harmful tax competition**
- **refrain** from introducing new ones in the future

The group mainly works on:

- anti-abuse rules
- transparency and exchange of information in the area of transfer pricing
- administrative practices
- promotion of the principles of the code of conduct in non-EU countries

An **Anti Abuse Subgroup** was created under the Irish Presidency of the Council in 2013. It reports to the Code of Conduct Group and works on **hybrid mismatches**.

# **The demands of the European Parliament on the Code of Conduct Group**

## **1. calls for an urgent reform of the Group**

- strengthened transparency and accountability
- governance and mandate to be reshaped
- permanent and politically accountable chair
- improvement of working methods including a possible enforcement mechanism
- regular participation of finance ministers or senior officials
- harmfulness criteria to be updated and broadened to cover new forms of harmful tax practises, including third countries
- Chair of the Group and Council to report regularly to ECON committee of the European Parliament
- consider to set up a “high level group on taxation policy” (“tax committee”) similar to the Economic and Financial Committee (EFC)
- give the European Parliament the right of initiative to denounce to the Code of Conduct Group national measures it deems harmful
- produce a second update of the Simmons & Simmons report on administrative tax practices (1999)
- Enhance strategic synergies between the reformed Code Group and the Commission’s enforcement of competition rules

## **The demands of the European Parliament on the Code of Conduct Group**

2. support for the proposals of the European Commission in its action plan of the 17<sup>th</sup> of June 2015 for fair and efficient corporate taxation

## Findings & demands of the European Parliament

P. whereas the legislator and often insufficiently resourced tax administrations cannot anticipate, but only react, sometimes with great delay, to the innovative tax avoidance schemes which are designed and promoted by some tax advisers, in particular from very large accountancy firms, by lawyers and by intermediary companies; whereas, in particular, experience shows that EU bodies which should prevent the introduction of new harmful tax measures (such as the Code of Conduct Group set up by Member States in 1998 or the Commission, as guardian of the Treaties) have proved incapable of countering these undesirable developments, sometimes reacting in an ineffective way or on the basis of too a limited mandate, and that many new and often aggressive tax avoidance measures or agreements, such as patent boxes, have been introduced in the EU; whereas MNCs are relying, in the EU and worldwide, on the expertise of a well-organised and skilled sector of tax advisers, as well as banks and other financial service providers, for the development of their tax avoidance schemes; whereas this sector is at the same time represented in bodies advising governments and public institutions on tax matters, such as, for instance, the EU Platform for Tax Good Governance; whereas there are concerns over the conflicts of interest that might arise from the provision by the same firms of advice to both public authorities and private MNCs;

40. Stresses that the Code of Conduct Group on Business Taxation (the ‘Group’), set up in 1998 by Member States, made it possible in the late 1990s and the early 2000s to eliminate what constituted the most harmful individual tax practices at the time through the double-track soft law approach of ‘rolling back’ existing tax measures that constituted harmful tax competition and refraining from introducing any such measures in the future (‘standstill’);
41. Deplores the fact that the Group’s work seems to have lost momentum; notes that some of the more than 100 measures which have been rolled back as a result of its activity have been replaced in Member States by tax measures with similar harmful effects; notes that tax authorities have countered the Group’s recommendations by creating new structures with the same harmful effects as those rolled back by the Group; deplores the fact that past attempts to strengthen its governance and mandate, and to adjust and broaden the working methods and criteria set in the Code, with the aim of combating new forms of harmful tax practices within the current economic environment, have not been successful; supports the Commission’s latest proposals on this matter, as set out in its action plan of 17 June 2015 for fair and efficient corporate taxation in the EU;

43. Deplores also the fact that the Group's original status and governance arrangements left too much room for political negotiations and compromises in seeking to reach 'broad consensus' (i.e. quasi-unanimity effectively, with the possibility to express disagreement in footnotes) on the assessment of harmful practices, thus affecting the reliability and completeness of its work and sometimes leading to the deliberate non-publication or the non-following up of reports, such as the 1999 report by Simmons & Simmons on administrative practices; considers it regrettable that the rollback of existing measures suffered from political delays and, in some cases, allowed the inclusion of new beneficiaries after the deadline, which is also related to the Group's very weak accountability and monitoring mechanisms;
44. Stresses more fundamentally that the Code's case-by-case approach, while having resulted in Member States now competing more with general measures, does not address the systemic weaknesses of a fragmented corporate tax framework in the EU, which requires a more substantial overhaul;

124. Calls for an urgent reform of the Code of Conduct on business taxation and of the Group responsible for its enforcement, given that, to date it has proved to be of questionable value, with a view to both addressing real obstacles currently in the way of effectively tackling harmful tax practices and to aiding EU-wide coordination and cooperation on tax policy;
125. Calls on the Member States, in a spirit of good cooperation, to endorse the proposals included in the Commission's action plan of 17 June 2015 for fair and efficient corporate taxation in the EU; believes that the Group's legitimacy would benefit from increased transparency and accountability; advocates therefore that the Group's governance and mandate be reshaped, including through the appointment of a permanent, politically accountable Chair, the improvement of its working methods, including a possible enforcement mechanism, the regular participation in the Group by finance ministers or senior officials, in order to raise its profile, and enhanced information exchange within the Group with a view to effectively addressing BEPS issues; calls also for the criteria set in the Code to be updated and broadened in order to cover new forms of harmful tax practices, including in third countries; calls on the Chair of the Group and on the Council to regularly report to and exchange with its competent committee on the activities of the Group, in particular with regard to the presentation of its biannual reports to ECOFIN;
126. Invites the Council, more generally, to support the promotion of genuine democratic scrutiny in cross-border tax matters at EU level, along the lines of what is already in place in other areas where Member States or other independent institutions, such as the European Central Bank and the Board of the Single Supervisory Mechanism, have exclusive competence; calls on the Council and the Member States to consider the possibility of setting up a high-level group on taxation policy, as also suggested by the Commission President; stresses that such a 'tax committee', accountable to Parliament, would encompass the Council and the Commission, following the model of Economic and Financial Committee, as well as independent experts, and would more generally exercise oversight of legislative and non-legislative tax policy and would report to ECOFIN; requests that Parliament be given a right of initiative to denounce to the Code of Conduct Group any national measure it deems to fit the criteria of harmful tax competition included in the Code of Conduct;

127. Calls on the Commission to give a second update to the 1999 Simmons & Simmons report on administrative practices mentioned in paragraph 26 of the 1999 Code of Conduct Group report, the Primarolo report (SN 4901/99);
  
133. Calls on the Commission, in line with the broader responsibility assigned to Member States by the SAM, to consider setting up a network of national tax administrations to exchange best practices and more consistently contribute to preventing the introduction of any tax measures that might constitute illegal state aid; invites the Commission to enhance strategic synergies between the activities of the (reformed) Code of Conduct Group and the Commission's enforcement of competition rules in the field of tax-related aid;

# **EU Commission on the 17<sup>th</sup> of March 2015:**

## **“Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance”**

### **4. *Reviewing the Code of Conduct on Business Taxation***

The Code of Conduct on Business Taxation has been an important tool for challenging harmful tax regimes. Despite its voluntary and inter-governmental nature, the Code has been effective in the past in eliminating certain harmful tax practices in the Member States. However recent cases have highlighted limitations in the scope of the Code and weaknesses in the mandate of the Code of Conduct Group. For example, in the debate on whether 3 Member States' patent boxes were harmful or not, the Group was initially unable to reach a decision, due to the fact that the criteria in the Code were inadequate to evaluate this modern type of tax incentive. Tackling complex new challenges to fair taxation and safeguarding tax transparency requires more decisive action by the Code Group, and more rigorous monitoring to ensure that Member States respect their commitments. The Commission is therefore reflecting on ways in which the Code of Conduct can be improved and the Group made more effective. These reflections will be submitted to Member States and will feed into the Action Plan on Corporate Taxation, to be adopted before the summer.

## **EU Commission on the 17<sup>th</sup> of June 2015:**

### **“Communication from the Commission to the European Parliament and the Council: A fair and efficient corporate tax system in the European Union”**

The Commission will explore concrete measures to ensure that these objectives are achieved, starting, for example, within the Code of Conduct for Business Taxation. The Commission recommends that the Code criteria be modified so that the Group can give high priority to ensuring effective taxation.

#### **5.2. Reforming the Code of Conduct for Business Taxation and the Platform on Tax Good Governance**

The Code of Conduct for Business Taxation Group is composed of Member State representatives to deal with harmful tax competition in the EU, in a non-binding way, on the basis of peer pressure. A number of Member States and stakeholders have supported the idea of extending the mandate of the Code and changing the working methods of this Group, to enable it to react more efficiently to cases of harmful tax competition. The Group should also provide guidance on how to implement non-legislative EU measures against corporate tax avoidance. The Commission will make a proposal to introduce these reforms in the Code of Conduct for Business Taxation, in close consultation with Member States.

The Platform on Tax Good Governance is a forum for Member States, businesses and NGOs to consult on tax policy issues, and to review progress on a range of measures, including the 2012 Action Plan on tax fraud and evasion. Its work has been very useful to date. The Commission has decided to prolong the mandate of the Platform, which was due to expire in 2016. It also has expanded the scope of the Platform and enhanced its working methods. As such, the Platform can help to deliver on the new Action Plan, facilitate discussions on Member States' tax rulings in light of the proposed new information exchange rules, and provide feedback on new anti-avoidance initiatives.

# **EU Commission on the 17<sup>th</sup> of June 2015: “Communication from the Commission to the European Parliament and the Council: A fair and efficient corporate tax system in the European Union”**

## **Questions & Answers**

### **What is the Code of Conduct on Business Taxation and why does it need to be reformed?**

Member States have committed to a non-binding Code of Conduct on Business Taxation, which sets out the criteria to assess whether national tax measures create harmful competition. This assessment is carried out by the Code of Conduct Group, which is made up of Member State representatives. In recent years, the Code has become less effective tool for tackling harmful tax regimes. This is partly because the criteria in the Code are no longer adequate to assess certain modern and complex tax regimes and partly because the Code Group lacks a strong enough mandate to act decisively.

The Commission will make a proposal to reform of the Code of Conduct to enable it to better react to modern cases of harmful tax competition. This will include extending the Group's mandate and changing its working methods. The Code Group should also be active in screening for cases of harmful tax competition in non-EU countries, as part of a EU approach to non-cooperative jurisdictions.

# **The Council's deliberations on the reform of the Code of Conduct Group**

## **1. Five Proposals on 11<sup>th</sup> of June 2015:**

- <http://data.consilium.europa.eu/doc/document/ST-9620-2015-INIT/en/pdf>

## **2. EcoFin, 8<sup>th</sup> December 2015 votes conclusions to reform the group and decided to finalize work on reform in the first half of 2016**

1. <http://www.consilium.europa.eu/en/press/press-releases/2015/12/08-ecofin-conclusions-business-taxation/>

## **3. EcoFin, 8<sup>th</sup> March 2016**

1. Reformed criteria to be voted

# Code of Conduct Group, 4th April 2015

## Mitschrift des dt. Finanzministeriums

++ Reform der Gruppe ++

LUX und AUT präsentierten die Vorschläge aus dem jeweiligen Room Document.

LUX plädierte dafür, die Stärkung der Gruppe könnte im Rahmen des bestehenden Mandats erfolgen. Die Vorschläge der KOM seien jedoch ebenfalls interessant.

KOM erläuterte die eigenen Vorschläge und kündigte weitere Vorschläge im Zusammenhang mit dem kommenden Aktionsplan an.

# Draft EcoFin Conclusions „Future of the Code of Conduct (business taxation)“: Rights of the European Parliament deleted

- 18. SUPPORTS regular oral reports to ECOFIN, as well as appearances in the European Parliament, of the Chair of the Group, as appropriate;
- 18. SUPPORTS regular oral reports to ECOFIN of the Chair of the Group, as well as ~~interinstitutional~~ exchange of information, if necessary;
- 19. EXPRESSES its wish to facilitate the access to information on ~~ongoing~~ and past work in the Group including already public documents, e.g. through a dedicated page on the Council's website and by releasing, to the extent possible, documents related to general guidance notes and to final decisions on individual measures;
- 19. EXPRESSES its wish to facilitate the access to information on ongoing and past work in the Group including already public documents, e.g. through a dedicated page on the Council's website and by releasing, to the extent possible, documents related to general guidance notes and to final decisions on individual measures;
- 20. INVITES the HLWP to review the new governance, transparency and working methods, especially on the efficiency of the decision making process also in relation to the use of the broad consensus rule in 2017; and report on that to the ECOFIN in December 2017;
- 20. INVITES the HLWP to review the new governance, transparency and working methods, especially on the efficiency of the decision making process also in relation to the use of the broad consensus rule in 2017; and report on that to the ECOFIN in December 2017;
- 21. INVITES the HLWP to examine the issue of the revision of the mandate of the Group, with the aim to take a decision on the possibilities and modalities to extend the mandate and to update the criteria by the end of the Netherlands Presidency."
- 21. INVITES the HLWP to examine the issue of the revision of the mandate of the Group, with the aim to take a decision on the possibilities and modalities to extend the mandate and to update the criteria by the end of the Netherlands Presidency."

**draft of 26th February 2016**

**draft of 4th March 2016**

# Weisung des dt. Finanzministeriums zum AStV vom 2.3.2016

## **4. Hintergrund/ Sachstand**

Unter NLD PRÄS wurde die Diskussion zur Reform der Gruppe Verhaltenskodex (Unternehmensbesteuerung) mit Bezug auf das Verfahren fortgeführt. Die vorliegenden Ratsschlussfolgerungen hierzu enthalten allerding nur sehr wenige substanzielle Änderungen. Es ist zu bezweifeln, dass diese ausreichen werden, die Effektivität der Gruppe zu verbessern.

DEU hat sich in den Sitzungen für weitreichende Änderungen am Verfahren und zur Erhöhung der Transparenz ausgesprochen. Insbesondere sollte eine Änderung bzw. Ausweitung der sog. „broad consensus rule“ erfolgen. Die faktische Auslegung dieser Regelung als „all MS minus 1“ – mithin nahezu Einstimmigkeit – beeinträchtigt und verzögert den Entscheidungsprozess erheblich. Dies wurde allerdings von einigen MS abgelehnt. Nach bilateralen Gesprächen mit der NLD PRÄS konnte ein Kompromiss gefunden werden, indem man einen Überprüfungsprozess für 2017 vorsieht und dann, falls erforderlich, eine Änderung bzw. Ausweitung der sog. „broad consensus rule“ erfolgt (Tz. 20 der Ratsschlussfolgerungen).

Im Vorfeld hat die NLD PRÄS diesen Kompromissvorschlag auch anderen MS zugeleitet. GBR, IRL, MLT, HUN und POL haben bereits Zustimmung signalisiert. LUX äußerte Bedenken hinsichtlich dieses Überprüfungsprozesses und könnte daher eine Streichung bzw. Änderung der Tz. 20 fordern. Für DEU ist der Kompromiss akzeptabel, sofern der Überprüfungsprozess mit Bezug zur broad consensus rule in Tz. 20 erhalten bleibt.

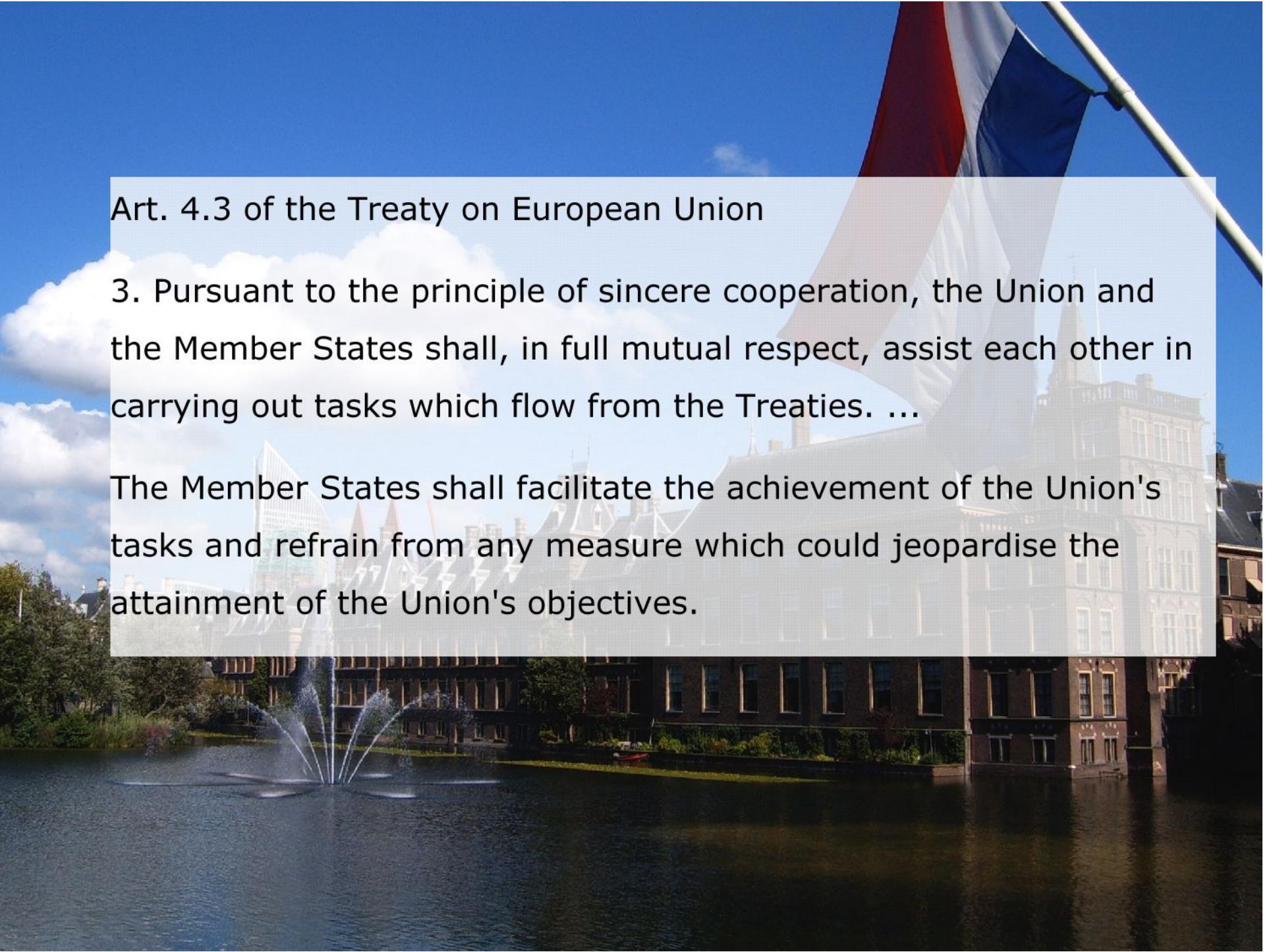
# **Government of the Netherlands: obstructing the TAXE investigation**

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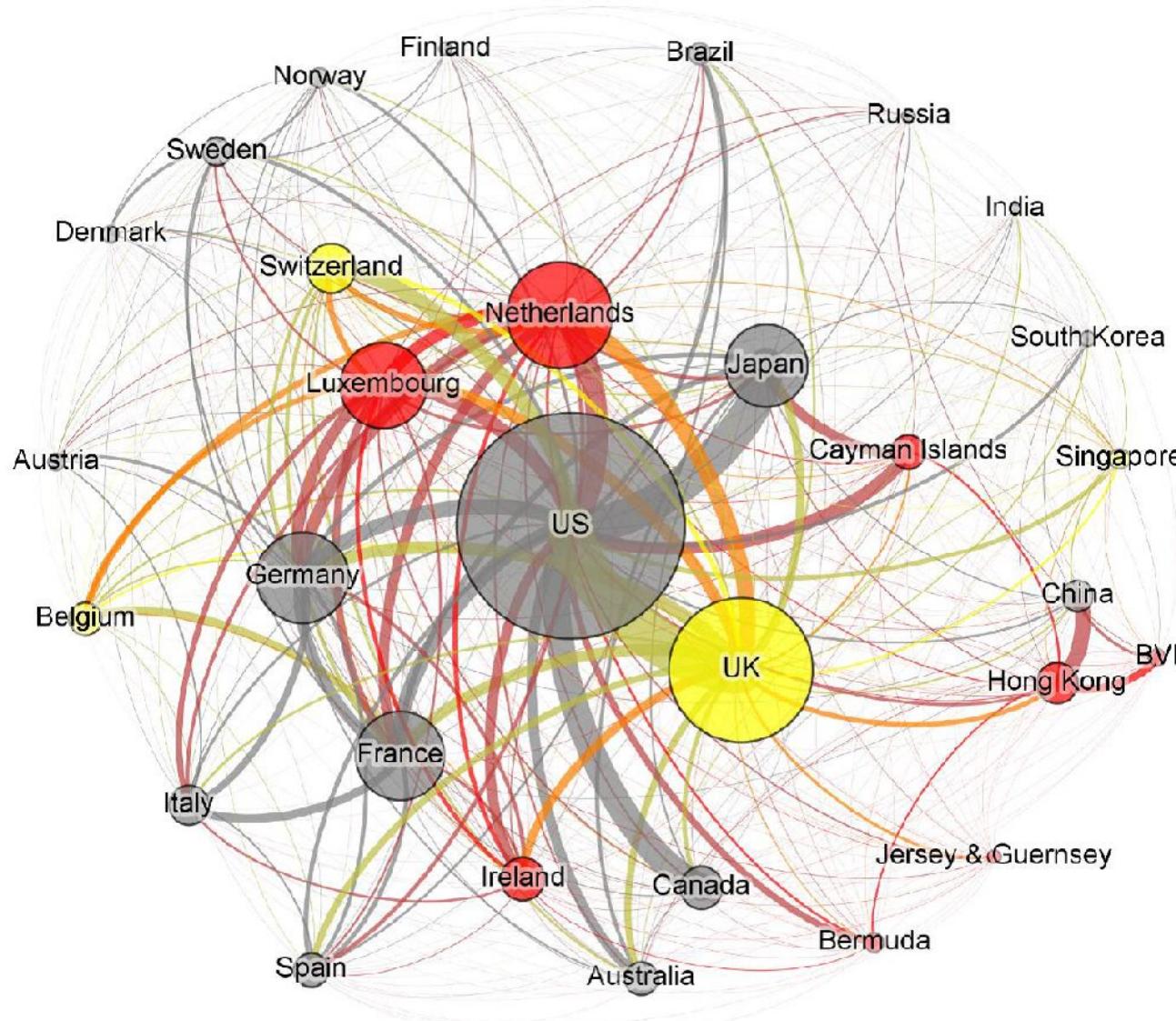


### Art. 4.3 of the Treaty on European Union

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. ...

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

**Figure 1** The Position of the Largest OFCs in Cross-border Global Finance in 2012



Source: Author based on BIS (2015b), IMF (2015a, 2015b).

## **The obstruction of investigation**

1. denial of access to documents of the Code of Conduct group
2. breach of promise to the Dutch parliament to co-operate fully with the investigation of the European Parliament
3. denial rather than strong reform of aggressive tax avoidance policies of the Netherlands
4. denial to accept Commission's modest verdict on illegal state aid to Starbucks

# **European Parliament is denied access to key information**

The Code of Conduct group on business taxation has been evaluating several hundred of potentially harmful tax regimes since 1998. Who denies what:

- Council: denies minutes and room documents of the meetings
- Commission: denies informal minutes of its services
- Commission has granted access to room documents since 2010 and announced to give access to older room documents since 1998 but makes access contingent to ex-ante approval by member states.
- Member states: 15 have granted access, 13 have asked COM to blacken all their information.

**CONSULTATION OF CODE OF CONDUCT GROUP DOCUMENTS**

**LIST OF MEMBERS STATES**

*as of 27 October 2015*

**GAVE CONSENT FOR THE DOCUMENTS TO BE CONSULTED "IN CAMERA":**

1. AUSTRIA
2. BULGARIA
3. CROATIA
4. CYPRUS
5. CZECH REPUBLIC
6. DENMARK
7. GERMANY
8. GREECE
9. FRANCE
10. IRELAND
11. ITALY
12. LITHUANIA
13. POLAND
14. PORTUGAL
15. SLOVAKIA

**OBJECTED OR DID NOT SEND RESPONSE:**

1. BELGIUM
2. ESTONIA
3. FINLAND
4. HUNGARY
5. LATVIA
6. LUXEMBOURG
7. MALTA
8. NETHERLANDS
9. ROMANIA
10. SLOVENIA
11. SPAIN
12. SWEDEN
13. UNITED KINGDOM

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Vergaderjaar 2014–2015

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**25 087**

**Internationaal fiscaal (verdrags)beleid**

**Nr. 89**

**MOTIE VAN HET LID KLAVER**

Voorgesteld 5 maart 2015

De Kamer,

gehoord de beraadslaging,

overwegende dat het Europees parlement onderzoek gaat doen naar belastingontwijkers, via de bijzondere commissie fiscale rulings, en andere maatregelen van vergelijkbare aard of met vergelijkbaar effect;

verzoekt de regering, aan dit onderzoek volledige medewerking te verlenen,

en gaat over tot de orde van de dag.

Klaver

# Why the denial is harming the investigation

**patent boxes** (or innovation boxes as call in NL) looked at by the Code of Conduct group in Sept 2014 with at least one harmful criteria met. But Dutch documents in the room documents are black.

**interest and royalties deduction.** This was also on the agenda of the code of conduct (work programme 2011) but again the room documents are all in black concerning the NL.

# The Dutch government's ironic response to the Code of Conduct group's questionnaire on tax rulings

Annex to ROOM DOCUMENT # 2  
Code of Conduct Group (Business Taxation)  
4 March 2010  
ORIGIN: Commission Services

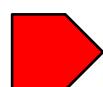
*Annex 1*

Administrative Practices Questionnaire  
Replies from the Member States

## Section 4 Impact of rulings on tax competition

Could you provide information on the importance your state attributes to rulings by fiscal authorities of other states regarding tax competition between Member States on a) relocation effects on companies resident in the Community and on b) investment decisions by third country investors?

Are there any other aspects of administrative practices in other Member States which should be discussed in the framework of the work program of the Code of Conduct Group?



As long as administrative practices are in line with legislation, tax competition is out of the question.

# Reaction to the EU commission's state aid decision on Starbucks

Home > Ministeries > Ministerie van Financiën > Nieuws

## Ministerie van Financiën

Overzicht Inhoud **Nieuws** Onderwerpen Documenten

### Nederlandse reactie op EC-besluit over Starbucks

Nieuwsbericht | 21-10-2015 | 11:15

Het kabinet is verbaasd over het besluit van de Europese Commissie dat Starbucks staatssteun zou hebben gekregen. Het zou gaan om een bedrag van tussen de 20 tot 30 miljoen euro opgeteld over een reeks van jaren. Het kabinet zal het besluit bestuderen en binnen enkele weken de Tweede Kamer informeren over de vervolgstappen.

Met de Europese Commissie vindt Nederland dat staatssteun moet worden aangepakt, ook als de staatssteun wordt verleend door middel van fiscale rulings. De Commissie heeft eerder aangegeven dat Nederland een robuuste en gedegen rulpingpraktijk heeft.

Dat de Commissie constateert dat in het dossier Starbucks Manufacturing sprake zou zijn van staatssteun roept veel vragen op en vereist nauwgezette bestudering. Nederland heeft de overtuiging dat de geldende internationale standaarden zijn toegepast en zal daarom de kritiek van de Commissie zorgvuldig analyseren voordat wordt besloten tot vervolgstappen.

Op basis van het Nederlandse belastingstelsel wordt winst belast waar waarde wordt gecreëerd. De Belastingdienst heeft met Starbucks Manufacturing een Advance Pricing Agreement (APA) afgesloten waarin een zakelijke beloning is overeengekomen voor het branden van koffiebonen, het zogeheten arm's length beginsel.

De Belastingdienst int belastingen over winst die Starbucks Manufacturing in Nederland maakt met het branden van koffiebonen. Omdat de intellectuele eigendomsrechten van Starbucks niet in Nederland zitten, worden de royalty's voor het gebruik daarvan ook niet in Nederland belast.

Het arm's length beginsel is zorgvuldig uitgewerkt in de Wet op de Vennootschapsbelasting en het verrekenprijzenbesluit. De wetgeving en de uitwerking daarvan is in lijn met de OESO-richtlijnen. De methode die Nederland in het dossier Starbucks Manufacturing heeft gebruikt is internationaal erkend en leidt ertoe dat binnen het Starbucks-concern dezelfde prijzen worden gehanteerd als tussen onafhankelijke partijen.

Nederland is voorstander van een breed gedragen, internationale aanpak van belastingontwijking. Daarom werkt Nederland actief mee aan initiatieven op dit vlak van de OESO en de Europese Unie.

Meer over Ministerie van Financiën

- Organisatie
- Diensten en instellingen
- Contact met Financiën

Bewindspersonen



Jeroen Dijsselbloem  
Minister van Financiën



Eric Wiebes  
Staatssecretaris van Financiën

# HAPPY BIRTHDAY LUXLEAKS



The Greens/EFA  
in the European Parliament



# **From now to your information:**

## **The presentation I gave on the 26th of October in Luxembourg**

# **Government of Luxembourg: obstructing the TAXE investigation**

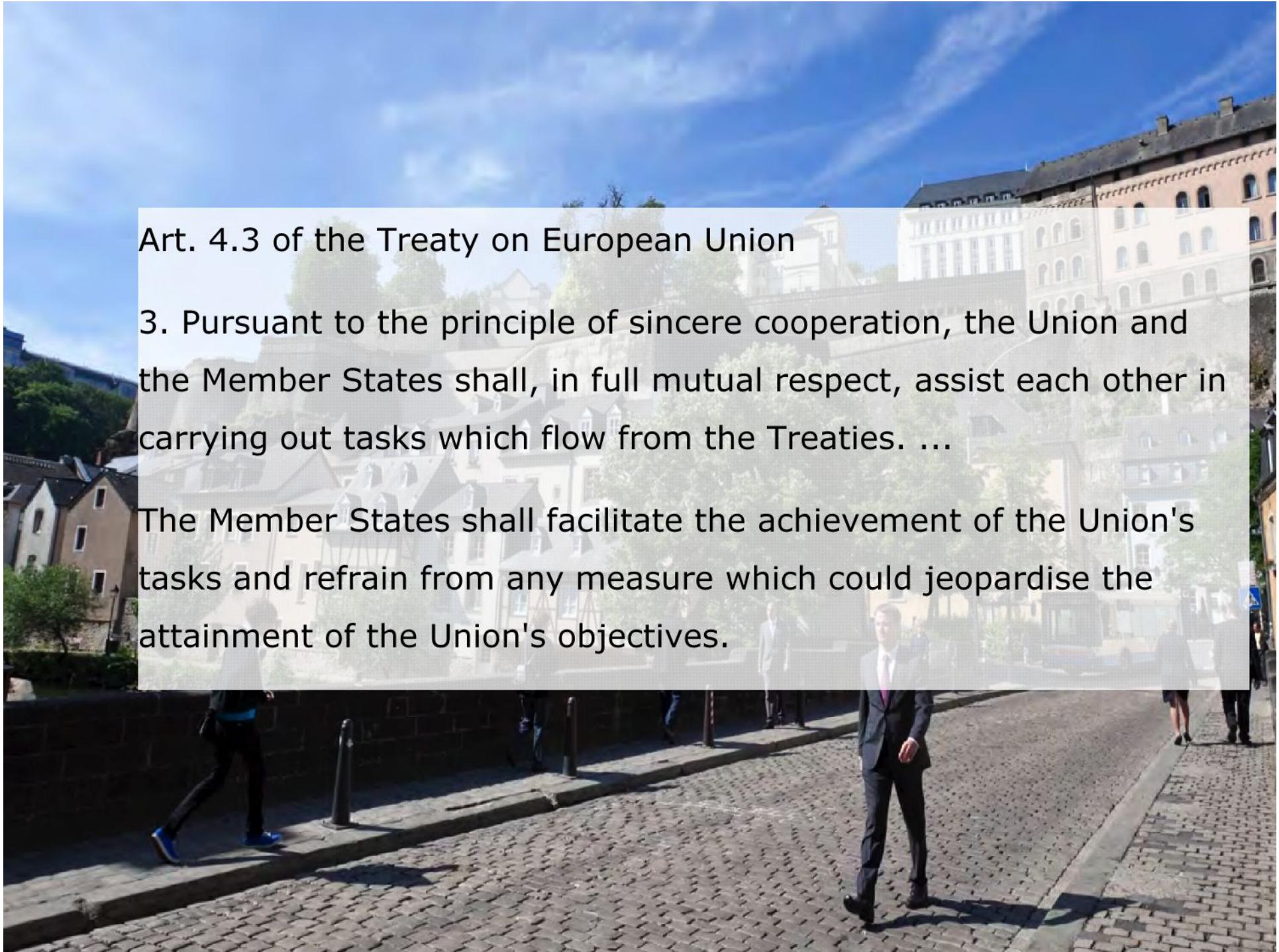
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## **Obstruction of investigation in 7 acts**

1. no serious answer to EP's questions
2. denial of access to documents of the Code of Conduct group
3. Council not granting the EP anything meaningful (confirmed hearing in EP on 22<sup>nd</sup> of Sept 2015)
4. ring fencing access of EU commission to exchange of rulings legislated under Luxembourg presidency
5. no consequences from the WALMART scandal
6. failure to deliver the promised "vade-mecum" on economic substance
7. making an example of tax whistleblower Antoine Deltour



Spezialkommission "Taxe" zu Besuch in Luxemburg

## "Wir haben nichts zu verstecken"



Waren sich in vielen Punkten einig: Finanzminister Pierre Gramegna (r.) und der Präsident der Spezialkommission "Taxe", Alain Lamassoure.

Foto: Pierre Matgé

Veröffentlicht am Montag, 18. Mai 2015 um 20:02

(CBu) - "Wir wollen mit unseren Partnern in der EU zusammenarbeiten und haben nichts zu verstecken." Mit diesen Worten resümierte Finanzminister Pierre Gramegna (DP) auf einer Pressekonferenz am frühen Montagabend die Unterredungen mit der Delegation der Spezialkommission "Taxe" des Europäischen Parlaments. Luxemburg



### Ähnliche Beiträge

- Tax Rulings: Kommission klopft Luxemburg auf die Finger
- Antoine Deltour au Luxembourg: "Dénoncer des pratiques systémiques"
- Bericht in "Cash Investigation": LuxLeaks: Anklage gegen Journalist

Treffen der EU

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Zuletzt veröffentlicht

# Demand for information of TAXE to Luxembourg of 23rd April 2015

I would be very grateful if you could provide the TAXE Committee Secretariat with the following information concerning your country:

- Action taken or planned at national level to increase transparency in the area of corporate taxation.
- Action taken or planned at national level to limit corporate tax base erosion and profit shifting.
- Overview (including date and name of company) of all tax rulings issued since 1991
- All information since 1.1.2010 shared with other Member States according to Council Directives 2011/16/EU article 9 and 77/799/EEC article 4.
- National list, if defined, of non-cooperative tax jurisdictions and its evolution and justification.
- A list of current international tax treaties having an effect to reduce corporate tax rates.
- Full report Krecke

# Information received June 2015



GRAND-DUCHÉ DE LUXEMBOURG  
Représentation permanente auprès  
de l'Union européenne

Ref: 4.4.31 – E04.04.310 – df

25741

Brussels, 1<sup>er</sup> June 2015

**Subject:** Information on the activities of the TAXE special committee

The Luxembourg government first wishes to express its commitment to fully cooperate with the TAXE Special Committee.

Notwithstanding the fact that the Luxembourg government is fully committed, as previously underscored, to help the Special Committee to meet the objectives of its mandate, it can only do so within the limits of any legal constraints to which it is subjected.

# Information received June 2015

- All information since 1.1.2010 shared with other Member States according to Council Directives 2011/16/EU article 9 and 77/799/EEC article 4

Luxembourg exchanges rulings upon request on a regular basis. A limited number of rulings have been exchanged on a spontaneous basis some time ago. Especially in the case of central management of companies, Luxembourg got in most of the cases a reaction saying that the information was not of interest to the country concerned.

Luxembourg has never received spontaneously any information on rulings from any other Member State.

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3. CROATIA
4. CYPRUS
5. CZECH REPUBLIC
6. DENMARK
7. GERMANY
8. GREECE
9. FRANCE
10. IRELAND
11. ITALY
12. LITHUANIA
13. POLAND
14. PORTUGAL
15. SLOVAKIA

**OBJECTED OR DID NOT SEND RESPONSE:**

1. BELGIUM
2. ESTONIA
3. FINLAND
4. HUNGARY
5. LATVIA
6. LUXEMBOURG
7. MALTA
8. NETHERLANDS
9. ROMANIA
10. SLOVENIA
11. SPAIN
12. SWEDEN
13. UNITED KINGDOM

# Response Council 23rd July 2015 to request from 22nd April 2015



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Ministère des Finances

Luxembourg, le 23.07.2015  
Réf. N° 50615/09029

Mr. Alain Lamassoure  
Chair  
European Parliament  
Directorate-General for Internal Policies  
Directorate A- Economic and Scientific Policies  
Special Committee Taxe  
Tax Rulings and Other Measures Similar in  
Nature or Effect

Dear Mr Lamassoure,

I would like to thank you for your letter of 8 July 2015 requesting further Council documents on behalf of the TAXE Committee.

As to documents from the Economic and Financial Committee (EFC) and Economic Policy Committee (EPC) relating to corporate taxation, tax avoidance, unfair tax practices and BEPS, I can inform you that we are not aware of any papers covering the issues you mentioned. Please note that those two Groups are operating under a very specific mandate and do not receive secretarial support by the GSC.

As to the other Working Parties referred to in your letter, we would like to draw your attention to the fact that we have already forwarded an exhaustive inventory with references to the agendas of the Code of Conduct Group and the Working Party on Taxation as well as a considerable number of documents, which we are in a position to share with you, on a CD. This inventory and the CD were attached to the letter, which was signed by Secretary-General Corsepius on 29 May 2015 in agreement with EU Member States.

Allow me to underline that the Council remains fully committed to cooperating with the European Parliament in general and with the TAXE Committee in particular, in the light of the applicable Treaty provisions.

The Council is at your disposal to answer any further questions you might have.

Yours sincerely,

Pierre Gramegna  
Minister of Finance  
Luxembourg

Jeppé Tranholm-Mikkelsen  
Secretary-General  
Council of the European Union

# **Charter of fundamental rights of the European Union**

## *Article 42*

### **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

# Greens/EFA letter to minister Gramegna on WALMART of 14th July 2015

*"Compared to other EU Member States, the anti-abuse concept contained under paragraph 6 of the "loi d'adaptation fiscale" has a broad scope of application. It allows the Luxembourg tax authorities to tax the legal acts carried out by taxpayers on the basis of their economic reality. Technically speaking, this concept is however not the only one to be used to assess factual circumstances such as " has this company sufficient economic substance?" The question as to whether a company has sufficient economic substance must be analyzed in the light of paragraph 15 of the " Loi d'adaptation fiscale", paragraph 159 (1) of the "Loi concernant l'impôt sur le revenu" and the Circular 164/2 (which contains the most recent guidelines in this respect) on the basis of facts. If the analysis of these facts leads to the conclusion that the company does not have sufficient economic substance in Luxembourg, it will not be considered as a Luxembourg resident company in the light of the respective Double Taxation Agreement and as a result of the application of the concept of economic substance, without any need to invoke the anti-abuse rule. The concept of economic substance is sufficient as such."*

Walmart has set up 22 subsidiaries in Luxembourg, 5 of which in 2015 alone. Walmart operates no stores in Luxembourg but books considerable profits.

Only two possible conclusions can be drawn from this case, and many other similar cases revealed by Luxleaks: Either you do not apply your own laws on economic substance and anti-abuse, or your law lacks substance.

# **Response by Pierre Gramegna on WALMART, 28th of August 2015**

Indeed, as inferred by §15 of the « Loi d'adaptation fiscale » and §159(1) of the « Loi d'impôt sur le revenu », Luxembourg tax law requires any company resident in Luxembourg to have its central administration in the country, which means that it must effectively have the functional capacity to realize its activity. This implies that the company disposes of qualified internal or external personnel and that the board of directors and the managers must have the professional knowledge required to realize there functions as well as the capability to engage the responsibility of the company.

With regard to financing transactions, these principals have been laid out in Circular 164/2. In this context, it is explicitly stated that a company active in this domain must fulfil clear substance conditions. For instance the relevant decisions must be taken in Luxembourg by qualified individuals and the company must dispose of qualified personnel, either internal or external, which is capable of executing the realized operations. Crucially, the company must be capable of monitoring the functions realized by its personnel. This together with the requirement that the entity is sufficiently capitalized to assure its activities implies that it effectively controls the relevant business risks.

Under the rule of law, it is hardly conceivable that a government would close down, as your letter suggests, companies that operate within the boundaries of the law.

# European Parliament's mission report on the TAXE visit, 18th May 2015

<http://www.sven-giegold.de/wp-content/uploads/2015/03/Mission-report-Lux.pdf>

*Luxembourg has defined in its loi general des import article 6 criteria to determine whether there is sufficient economic substance created in Luxembourg to be taxed in the country. These criteria are developed in an administrative vade-mecum which, for issues of confidentiality, was not annexed to the follow-up letter sent by Mr Gramegna to Mr Lamassoure, despite the specific request for it and the fact that the Minister said orally that it would be at the disposal of the delegation. [Neither Mr Gramegna nor the heads of administration were able to give proof for the robustness of the criteria nor of the application of an anti-abuse clause.] Recent reforms did not introduce changes to the notion and application of economic substance requirements*

# Key quotes

„The government of Luxembourg has systematically obstructed the tax investigation of the European Parliament.“

„Transparency is fundamental to democracy. Citizens and the European Parliament have a right to get access to all relevant documents of the Council. The Luxembourg presidency harms citizens' respect in the European Parliament by refusing access to minutes and documents.“

„I call on the government of Luxembourg to give access to all documents and minutes of the Code of Conduct group on business taxation.“

„Luxembourg has still to prove that it has changed. The denial of transparency to the directly elected European Parliament does not fit to the new clean image of the financial centre.“

# Additional reading

EU Commission (2014): State aid investigations against Fiat Finance/Luxembourg.

[http://ec.europa.eu/competition/state\\_aid/cases/253203/253203\\_1590108\\_107\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253203/253203_1590108_107_2.pdf)

EU Commission (2015): Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules.

[http://europa.eu/rapid/press-release\\_IP-15-5880\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5880_en.htm)

Financial Times (2015): The case against Luxembourg:

<http://ftalphaville.ft.com/2015/10/21/2142483/the-case-against-luxembourg/>

Jan Fichtner (2015): The offshore intensity ratio.

[https://www.academia.edu/15386988/The Offshore-Intensity Ratio Identifying the Strongest Magnets for Foreign Capital](https://www.academia.edu/15386988/The_Offshore-Intensity_Ratio_Identifying_the_Strongest_Magnets_for_Foreign_Capital)

## Prise de position du Luxembourg suite à la décision de la Commission européenne dans l'affaire Fiat Finance and Trade (21.10.2015)

Communiqué par: ministère des Finances

Le Luxembourg ne partage pas les conclusions de la Commission dans l'affaire Fiat Finance and Trade et réserve tous ses droits.

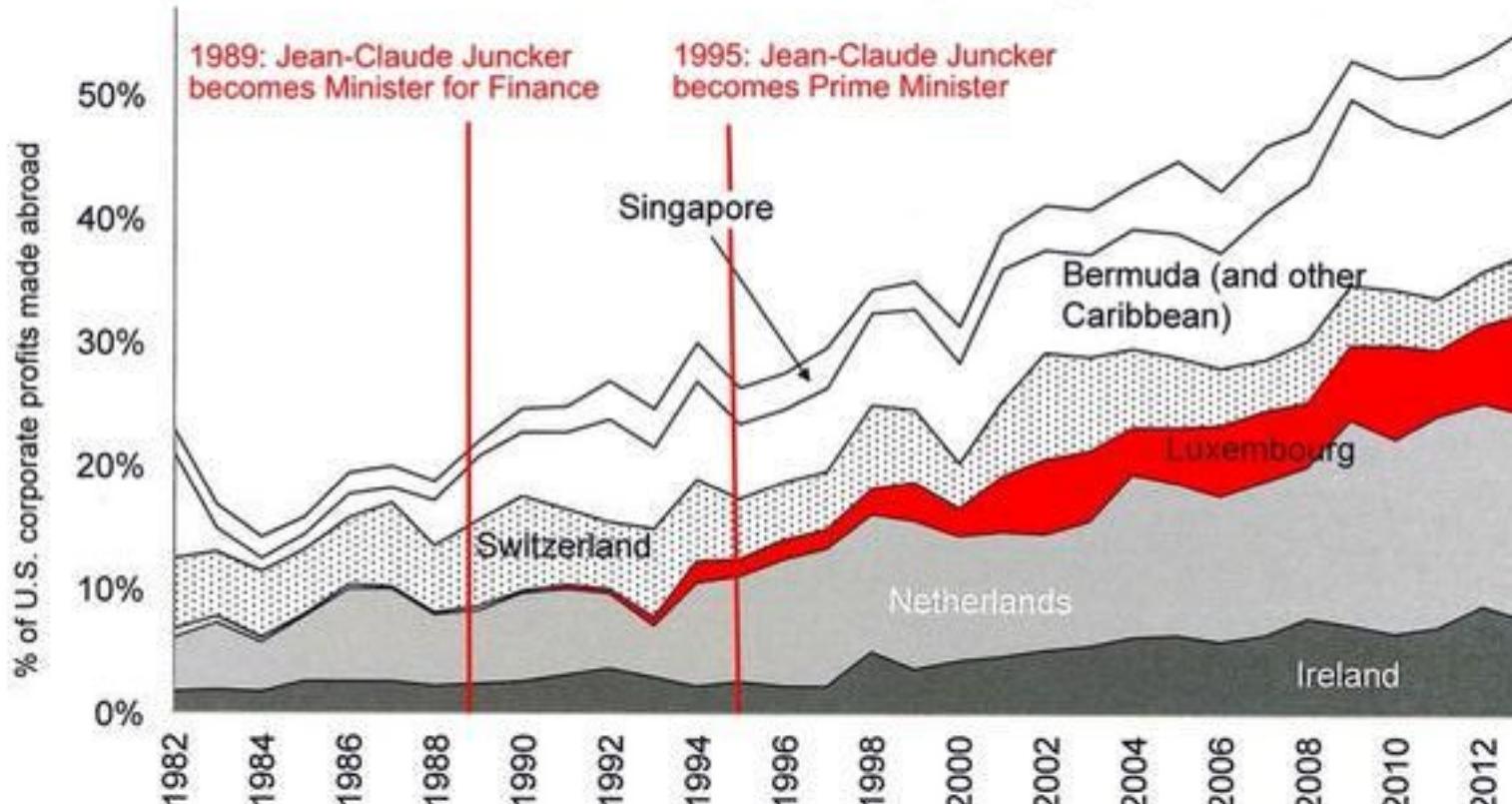
Le Luxembourg analysera avec la diligence requise la décision de la Commission et son raisonnement juridique.

Le Luxembourg constate dès à présent que la Commission a eu recours à des critères inédits pour l'établissement de l'aide d'État alléguée. En particulier, la Commission ne démontre pas l'existence d'un avantage sélectif octroyé à Fiat Finance and Trade au regard du cadre juridique national.

Le Luxembourg estime ne pas avoir accordé à Fiat Finance and Trade une aide d'État incompatible avec le marché intérieur au sens de l'article 107(1) du Traité sur le fonctionnement de l'Union européenne.

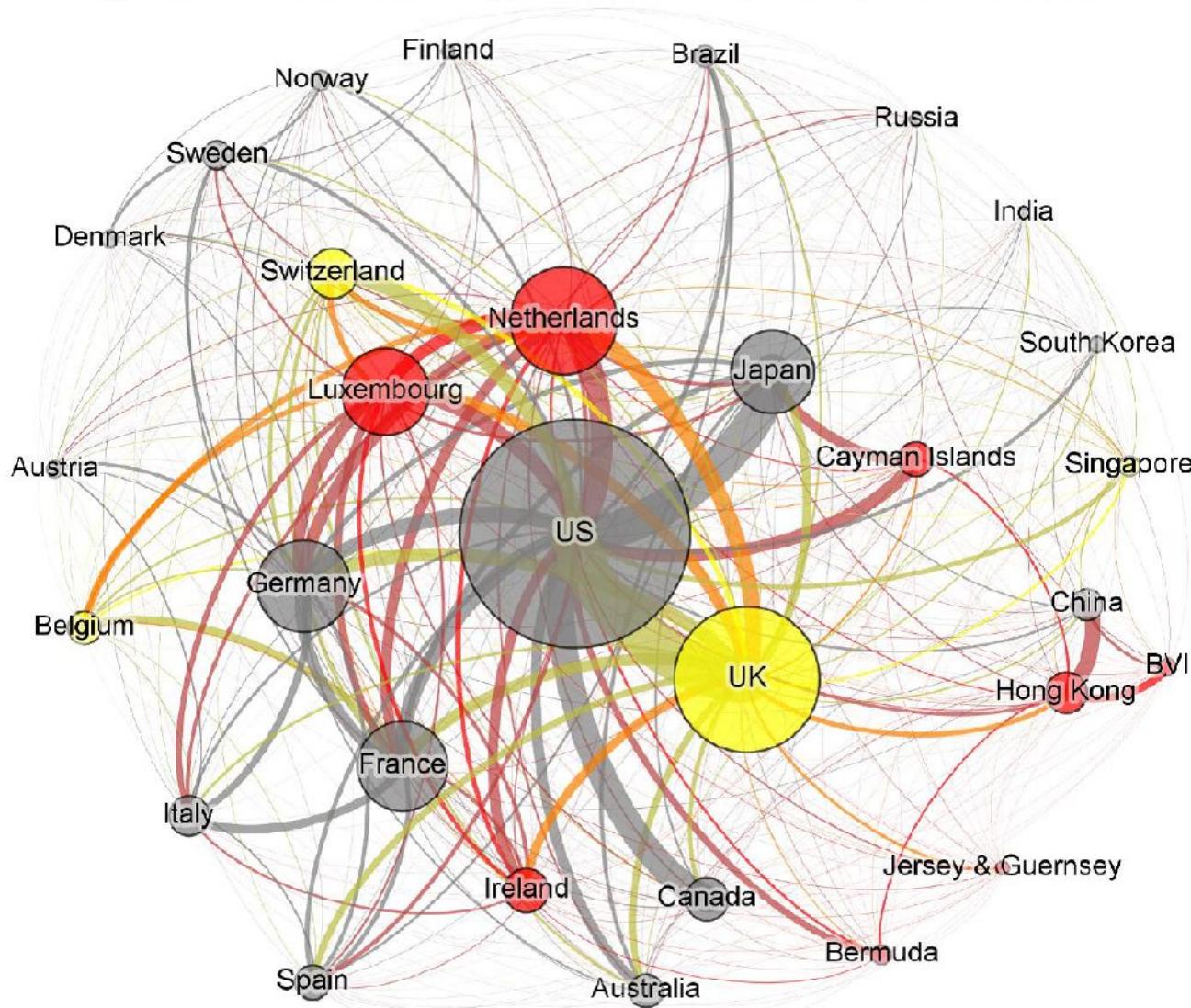
Le Luxembourg respecte les normes internationales, notamment celles relatives au principe de libre concurrence (*arm's length principle*), applicables en matière de prix de transfert ainsi que les règles relatives aux aides d'État.

### The share of tax havens in U.S. corporate profits made abroad



Notes: This figure charts the share of income on U.S. direct investment abroad made in the main tax havens. In 2013, total income on U.S. DI abroad was about \$500bn. 17% came from the Netherlands, 8% from Luxembourg, etc. Source: author's computations using balance of payments data, see Online Appendix.

**Figure 1** The Position of the Largest OFCs in Cross-border Global Finance in 2012



*Source:* Author based on BIS (2015b), IMF (2015a, 2015b).

**Table 4** The 40 Most Intensive Jurisdictions in Cross-border Global Finance 2013

Rank	Jurisdiction (Sovereign country)	Foreign Assets (USD bn)	GDP (USD bn)	Offshore- Intensity Ratio
1	<b>Cayman Islands (UK)</b>	4,173	2.7	1,545.6
2	<b>British Virgin Islands (UK)</b>	1,177	1.1	1,070.0
3	<b>Marshall Islands (US)</b>	40	0.2	200.0
4	<b>Bermuda (UK)</b>	1,033	5.6	184.5
5	<b>Jersey (UK)</b>	681	6.2	109.8
6	<b>Luxembourg</b>	5,513	60.1	91.7
7	<b>Guernsey (UK)</b>	254	3.6	70.6
8	<b>Curaçao (NL)</b>	290	5.6	51.8
9	<b>Bahamas</b>	295	8.4	35.1
10	<b>Barbados</b>	71	4.3	16.5
11	<b>Cyprus</b>	350	21.9	16.0
12	<b>Mauritius</b>	170	11.9	14.3
13	<b>Isle of Man (UK)</b>	81	6.7	12.1
14	<b>Ireland</b>	2,480	232.1	10.7
15	<b>Hong Kong (China)</b>	2,065	274.0	7.5
16	<b>Netherlands</b>	5,417	853.5	6.3